IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C.(Appeal) No.1371 of 2007

The Commissioner of Income Tax
Tiruchirapalli. .. Appellant

versus

M/s.Bharat Heavy Electricals Ltd., Complex
Cooperative Labour Contract Society Ltd.
E&R Sector, Dr.Ambedkar Nagar
Kailasapuram, Trichy-14. .. Respondent

Appeal presented to the Highcourt against the order of the Income Tax Appellate Tribunal Madras 'c' Bench Chennai dated 16.03.2007 passed in ITA No. 2018/MDS/2006 against the order of the Commissioner of Income Tax (Appeals) No.4, Williams Road, Cantonment Tiruchirapalli-1 dated 6-7-2006 in ITA 565/05-06 against the order of the Income Tax Officer Ward iv (1) Trichy dated 9.01.2006 in PAN No. AAAAB0131 E for the assessment year 2003-04.

For appellant : Mr.T.Ravikumar
Standing Counsel for Income Tax

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

The Revenue seeks the admission of the Tax case for the assessment year 2003-04 on the following substantial questions of law:

(i) Whether on the facts and in the circumstances of the case, the income Tax Tribunal is right in law in not considering the merits of the case but merely dismissing the appeal on the ground of low tax effect?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in not considering the

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judgments of the High Court which clearly state that irrespective of the low tax effect, the matter is to be decided on merits?

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in not considering the fact that the assessee had not established the nexus between the interest debited and the interest earned in order to claim netting? and

(iv) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in not considering the judgment of the Supreme Court in the case of CIT Vs. Dr.V.P.Gopinathan reported in 248 ITR 449 wherein the Hon'ble Supreme Court had observed that only gross interest from bank could be taxed and netting provisions may not apply?

2. It is seen that the assessee is a Cooperative Labour Contract Society registered under the Tamil Nadu Cooperative Societies Act with effect from 10.7.1978. It is stated that the object of the Society is to promote economic interest of the labour members of the Society, to find suitable employment by obtaining contract from public bodies and encouraging thrift and self help among the members.

3. In the return filed by the society for the Assessment Year 2003-04, admitting an taxable income of Rs.13,130/-, the assessee claimed deduction under Section 80-P of the Income Tax Act, 1961, to an extent of Rs.3,44,701/-. The assessee claimed deduction under Section 80-P(2)(a)(vi) on the interest from the members amounting to Rs.2,98,041/-. The Assessing Authority held that the interest from members, interest from deposits and sale of empty containers was not allowed for the deduction allowable under Section 80-P, since its receipts were not relatable or attributable to the primary object of the society, which is collective disposal of labour of its members.

4. On appeal, the Commissioner of Income Tax (Appeals) held that if the amount given as a loan to the members was borrowed from outsiders at a particular rate and given as a loan to the members, then the assessee was entitled to claim deduction for the interest paid. Hence, the Appellate Authority held that it was not the gross receipt of interest which was liable to be taxed, but the net interest income alone would be taxable. Hence, both on accounting as well as legal principles, the Commissioner of Income Tax (Appeals) held that the amount of interest paid to the members should be treated as allowable expenditure against the interest receipts. However, the first appellate authority rejected the plea of the assessee on other counts.

5. The Revenue preferred an appeal before the Income Tax Appellate Tribunal on the question of taxability of the interest income. It is seen that at the time of hearing, the assessee's counsel submitted that the tax effect involved in this appeal is less then Rs.1,00,000/- and hence, the Department is precluded from raising any appeal against such cases.

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Accepting the plea of the assessee, the Tribunal, in its order dated 16.3.2007, dismissed the Revenue's appeal. In so doing, it followed the decision reported in 275 ITR 244 (CIT Vs. KODANAND TEA ESTATES CO.) and held that the Revenue's appeal pertained to the assessment year 2003-04 which was after the Circular of the Board dated 1.4.2000. Aggrieved by the said order, the Revenue is on appeal before this Court seeking admission.

6. It may be noted that this Court considered a similar issue in the decision rendered on 16.8.2007 in T.C.No.222 of 2004. Based on Instruction 1979 in Circular F No.279/126/98 ITJ dated 27.3.2000, referring to the statutory power under Section 119 of the Income Tax Act, 1961 under which the circular was issued, this Court held that

> "10. We are of the considered view that none of the exceptions stated in the circular are applicable to the facts of the present case. The circular was stated to be issued by invoking the statutory power under Section 119 of the Income-tax Act. The appeal is filed under Section 260-A of the Income-tax Act. It is well settled principle of law that each and every provision of a statute has to be given the same importance. One provision cannot be alleviated to a higher pedestal than the other provision, of course, unless or otherwise specifically stated either in the scheme, the Act or in the provision itself that a particular provision is subjected to or qualified by any other provision or the provision can be given effect to notwithstanding anything contained in any other provisions by assigning overriding effect. Hence, the contention that notwithstanding the circular, which was issued under Section 119 of the Income- tax Act, the appeal could be filed by the revenue under Section 260-A has to be rejected for the reason that if the contention is accepted, one of the Section would become virtually otiose and that cannot be the intention of the law makers. "

7. Thus, following the long line of case law reported in 258 ITR 300 (COMMISSIONER OF INCOME-TAX Vs. RAJASTHAN PATRIKA LIMITED), 261 ITR 406 (COMMISSIONER OF INCOME-TAX Vs. P.S.T.S.THIRUVIRATHNAM AND SONS), to which one of us is a party (K.Raviraja Pandian,J.), 292 ITR 314 (COMMISSIONER OF INCOME-TAX Vs. DIGVIJAY SINGH) and 254 ITR 565 (COMMISSIONER OF INCOME-TAX Vs. CAMCO COLOUR CO.), this Court held that the long line of judicial opinion is that if the tax effect is less than what is stated in the circular, the Revenue need not agitate the issue on appeal and that the circular is binding on the Revenue.

In the light of the said view expressed by this Court and on the admitted fact that the tax effect is also negligible and less than

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Rs.1,00,000/- and the case not falling under any of the stipulations of the circular, we do not find any justification to admit this appeal. Consequently, the same is dismissed.

sd/-
Asst.Registrar

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Sub Asst.Registrar

ksv

To:

1. The Asst. Registrar,
   The Income Tax Appellate Tribunal,
   Madras 'C' Bench, Chennai.

2. The Commissioner of Income Tax (Appeal 4),
   Williams Road, Cantonment,
   Tiruchirapalli.

3. The Income Tax Officer Ward(IV),
   Trichy.

4. The Commissioner of Income Tax
   Tiruchirapalli.

+ cc to Mr. N. Muralaikumaran, Advocate, Sr.65291.

BV(CO)
RP 4/12/2007.

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